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Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses)

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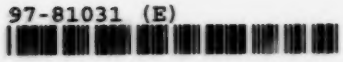

Mr. Yamada (Japan) (Chairman of the Working Group of the Whole on the Elaboration of a Framework Convention on the Law of the Non-Navigational Uses of International Watercourses) took the Chair.

The meeting was called to order at 10.25 a.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

Elaboration of a framework convention on the law of the non-navigational uses of international watercourses on the basis of the draft articles adopted by the International Law Commission in the light of the written comments and observations of States and views expressed in the debate at the forty-ninth session (continued) (A/C.6/51/NUW/WG/CRP.82, 83, 87 and 92)

Article 33

1. Mr. LAMMERS (Chairman of the Drafting Committee) regretted the failure to achieve consensus on his proposal, which was contained in document A/C.6/NUW/WG/CRP.83. Even though some States did not wish to place obstacles in the way of a consensus, they nevertheless wished to place on record their reservations over the paragraph that provided for binding recommendations and fact-finding. Other States were of the view that the proposal was too restricted and that it should contain provision for binding arbitration and/or recourse to the International Court of Justice. Most of those States were prepared to accept the text proposed in the above-mentioned document, since they had concluded that it represented a compromise and was the proposal most likely to be accepted by the majority of States. He wished to propose a number of drafting changes which had been suggested to him: (1) place paragraph 3, which concerned the choice between arbitration and/or submission of the dispute to the International Court of Justice, at the end of the article, which would mean the renumbering of the other paragraphs; (2) correct the typographical error in paragraph 3 (b), in which a comma should be inserted after the words "otherwise agreed"; (3) in paragraph 4, replace the words "referred to in that paragraph" with the words "referred to in paragraph 2" in order to avoid any misinterpretation; (4) replace the words "watercourse State" in paragraph 6 with the words "riparian State" in both places where that term was used, since "watercourse State" was certain to be associated with the States Parties to the Convention and it was necessary to clarify that the exclusion also applied to riparian States that were not Parties to the Convention. With regard to the annex (A/C.6/51/NUW/WG/CRP.87), the Observer for Switzerland had proposed an amendment to article 4. Instead of granting the Secretary-General the prerogative of designating the Chairman of the arbitral tribunal, that prerogative should be granted to the President of the International Court of Justice.

2. Mr. ROTKIRCH (Finland), referring to the annex, said that it would be logical to also replace the term "watercourse State" in article 3 with "riparian State".

3. The CHAIRMAN said that the only difference between the proposal of the Chairman of the Drafting Committee and that of China, which was contained in document A/C.6/51/NUW/WG/CRP.82, was that the former provided for compulsory fact-finding mechanisms while the second did not, although China was prepared to accept such mechanisms provided that the parties to the dispute consented thereto.

4. Ms. GAO Yanping (China) said that the main issue was the need for the Convention to be accepted in the future by the largest possible number of States. For that, it was essential to take account of the concerns expressed by States. China was not opposed to binding procedures, only to the adoption of such procedures without the consent of the parties. The proposal of the Chairman of the Drafting Committee did not reflect those concerns and it was for that reason that China could not join in the consensus.

5. Mr. GONZÁLEZ (France) stated for the record that France did not agree to the inclusion of such detailed provisions for the settlement of disputes, since that approach did not appear to be consistent with the concept of a framework convention. Furthermore, it would be more logical to place paragraph 3 at the beginning of the article, since the current paragraph 1 referred to "the following provisions". In paragraph 4, the words "paragraph 3" should be replaced by "paragraph 1".

6. Mr. P. S. RAO (India) said that India could not join in the consensus because the proposal before the Committee still contained binding elements; those procedures should be optional. In a framework convention, the method for the settlement of disputes should be determined by mutual agreement of the parties concerned; it should not be contained in the text of the Convention and certainly not in the form of a binding provision.

7. Mr. SALINAS (Chile) said that he agreed with the proposal of the Chairman of the Drafting Committee since, although he recognized the need for the Convention to be ratified by as many States as possible, it was also necessary to have a convention that was meaningful. A convention without a binding dispute-settlement procedure, even one whose binding character was as limited as fact-finding, would lead to a severe imbalance vis-à-vis the obligations provided for in the Convention, particularly when one took into account the provisions of article 17, paragraph 3.

8. Mr. PAZARCI (Turkey) said that it was not acceptable that a framework convention should provide for binding rules. The mechanisms should be optional. China's proposal might have been acceptable to Turkey if a consensus had been achieved on it.

9. Ms. RONEN (Israel) said that she wished to place on record her delegation's reservations with regard to the binding nature of the mechanism. Even though fact-finding might be an appropriate procedure in certain cases, its use should require the consent of all the parties concerned.

10. Ms. VARGAS DE LOSADA (Colombia) said that her delegation was not opposed to the establishment of binding procedures, although it was of the view that the freedom to elect the dispute-settlement mechanisms, which was provided for in

the Charter of the United Nations, should be respected. It did not believe that a framework convention that would govern specific agreements on the uses of international watercourses should provide for binding procedures, even when the results of those procedures were not binding on States, since that would mean limiting the freedom to decide on the means of settlement of a specific dispute. Consequently, the delegation of Colombia could not join in the consensus.

11. Mr. BOCALANDRO (Argentina) said that, while his delegation would have preferred a much more binding text, it accepted the text proposed by the Chairman of the Drafting Committee. He proposed the addition at the beginning of paragraph 1 of the words "Except otherwise agreed by the Parties". He considered that that would be a logical and natural insertion and recalled that that wording had been used in the earlier versions of the article.

12. Mr. CAFLISCH (Observer for Switzerland) said that his delegation considered that it had made a great sacrifice in joining, with some reluctance, in the consensus on the proposal of the Chairman of the Drafting Committee and it would not go back on its decision. He regretted that other delegations had not made the same sacrifice. He did not share the view expressed by certain delegations that a convention, not a framework convention but a convention with such specific contents as the one before the Committee, did not require provision for any procedure for the peaceful settlement of disputes.

13. Mr. PRANDLER (Hungary) said that his delegation had always been in favour of a compulsory mechanism for the binding settlement of disputes. It was for that reason that it found the proposal of the Chairman of the Drafting Committee unsatisfactory. Even so, in a spirit of cooperation and with a view to achieving a consensus, it would accept the proposal.

14. Mr. NGUYEN QUY BINH (Viet Nam) said that, since some countries had a negative opinion of the obligation not to cause harm to other riparian States, fact-finding was a minimum obligation which should be included in the Convention. He therefore fully supported the text by the Chairman of the Drafting Committee.

15. Mr. HANAFI (Egypt) said that although his delegation had always preferred general provisions which would enable the parties to choose the means for the peaceful settlement of disputes, which was compatible with the framework Convention, for the sake of achieving consensus it was prepared to accept the text by the Chairman of the Drafting Committee.

16. Mr. LAVALLE (Guatemala) said that although the commissions which would be established under article 33 in accordance with the proposal by the Chairman of the Drafting Committee would be able to make recommendations to the parties to a dispute, which was not usual for such commissions, they would not have any power to investigate disputes in which there was no disagreement about the facts, which were likely to arise frequently in the application of the Convention.

17. The CHAIRMAN said that the representative of Guatemala should transmit directly to the Chairman of the Drafting Committee the stylistic amendments he wished to make.

18. Mr. SVIRIDOV (Russian Federation) asked whether the amendments proposed by the representative of Guatemala were concerned only with the Spanish text or whether they also involved changes to the English text. He also asked for clarification as to what the Chairman of the Drafting Committee had meant when he said that the Observer for Switzerland wanted reference to be made to the President of the International Court of Justice, in relation to arbitration, in article 4 rather than in article 33.

19. The CHAIRMAN, responding to the request for clarification by the representative of the Russian Federation, said that the changes proposed by the representative of Guatemala were purely stylistic and that the representative of Guatemala was prepared to accept the existing text.

20. Mr. LAMMERS (Chairman of the Drafting Committee), referring to the second clarification requested by the representative of the Russian Federation, said that there was a misunderstanding. The Swiss amendment was concerned with article 4 of the annex concerning arbitration (A/C.6/51/NUW/WG/CRP.87).

21. Mr. PULVENIS (Venezuela) said that Venezuela's position was to ensure full freedom of the parties as to the choice of means for settling disputes. Because of the very specific nature of the fact-finding procedure, his delegation had supported the formula used in the draft prepared by the International Law Commission (A/49/10) and the initial proposal put forward by the Chairman of the Drafting Committee. His delegation therefore welcomed the current proposal with the typographical and stylistic changes which had been made and joined the consensus with regard to accepting the proposal by the Chairman of the Drafting Committee.

22. Mr. YAHAYA (Malaysia) said that a binding procedure was essential in order to settle disputes quickly. Small States would be unprotected against large States without a procedure of that type. He therefore accepted the proposal by the Chairman of the Drafting Committee.

23. Mr. PASTOR RIDRUEJO (Spain) said that he supported as a starting point the proposal on the settlement of disputes made by the representatives of Sweden and the Syrian Arab Republic which ultimately entailed mandatory recourse to judicial settlement. In a spirit of compromise and out of a desire for cooperation, Spain could accept the proposal by the Chairman of the Drafting Committee, as orally amended.

24. Mr. AMARE (Ethiopia) said that there were good reasons for allowing the parties concerned to select the fact-finding procedure. With a view to achieving consensus, he supported the proposal by the Chairman of the Drafting Committee.

25. Mr. ROTKIRCH (Finland) said that he would have preferred a binding procedure for the settlement of disputes, and had initially made a proposal to that effect. Later he had tried to reach agreement about a binding conciliation procedure, but for the sake of achieving consensus, he supported the proposal by the Chairman of the Drafting Committee.

26. Mr. HAMID (Pakistan) said that he too was in favour of a binding procedure for the settlement of disputes. However, although he had referred the question to his Government, he did not yet have a mandate, and he therefore reserved his position.

27. Mr. KASME (Syrian Arab Republic) said that the Syrian Arab Republic was one of the States which wanted article 33 to be binding in nature. Since the issue was fact-finding, however, his delegation was in favour, as minimum, of a binding procedure for fact-finding. His delegation reserved its position about the article as a whole.

28. Mr. ENAYAT (Islamic Republic of Iran) said that his delegation did not wish to block the consensus about the text by the Chairman of the Drafting Committee. However, his delegation felt that it was necessary to envisage the express consent of the watercourse State concerned for the establishment of a fact-finding commission. His delegation therefore entered a reservation in that respect.

29. Mr. LAMMERS (Chairman of the Drafting Committee), referring to the drafting change in paragraph 1 suggested by the representative of Argentina, said that the change was not really necessary since when the parties agreed on another procedure for the settlement of disputes and in particular when it involved a specific watercourse, if the procedure already existed it would prevail and if it was new, it would also prevail because a more recent convention or a more specific agreement would be involved.

30. The CHAIRMAN said that the representative of Argentina was not insisting on his proposal; he therefore invited the Working Group to take a decision about the substance of article 33 submitted by the Chairman of the Drafting Committee. With regard to the question of deciding whether the Secretary-General of the United Nations or the President of the International Court of Justice should be mentioned in article 4 of the annex, he said that further consultations would have to take place, even though the Chairman of the Drafting Committee would prefer to resolve the question.

31. Mr. HARRIS (United States of America) said that he had no objection to the proposal, which he felt was perfectly reasonable.

32. Mr. CAFLISCH (Observer for Switzerland) said that the text which had been submitted appeared in the Convention on Biological Diversity and many other agreements and conventions which were similar to the Convention under consideration and, more specifically, in the Convention on the Law of the Sea. Fact-finding was a diplomatic procedure for the settlement of disputes, and the conciliators or, failing that, the experts should therefore be appointed by the supreme political organ of the United Nations, namely, the Secretary-General. As was envisaged in most of the conventions which had an optional arbitral procedure, the chairman of the main legal organ of the United Nations, namely, the President of the International Court of Justice, should appoint the arbitrators who had not been designated.

33. The CHAIRMAN asked whether there were any objections to mentioning the President of the International Court of Justice in article 4 of the annex.

34. Mr. SALINAS (Chile) and Mr. BOCALANDRO (Argentina) said that they fully supported the Swiss amendment.

35. The CHAIRMAN said he would take it that the Working Group wished to adopt the proposal by the Chairman of the Drafting Committee on article 33 with the amendment to article 4 of the annex proposed by Switzerland.

36. It was so decided.

37. Mr. HARRIS (United States of America) submitted a proposal on article 2, paragraph (c) (A/C.6/51/NUW/WG/CRP.92).

38. Mr. MANONGI (United Republic of Tanzania) supported the proposal put forward by the representative of the United States. The reference to regional economic integration organizations represented a considerable improvement over the previous text.

39. Ms. GAO Yanping (China) said that while her delegation was not opposed to ratification or accession by a regional economic integration organization, the latter could, however, not be referred to as a "watercourse State". She would accept the proposal of the United States if the last part of the sentence, from the words "or a party" to the end of the paragraph, was deleted.

40. Mr. NGUYEN QUY BINH (Viet Nam) supported the proposal of the United States, although he would like to see a reference elsewhere in the Convention to his concern regarding the implementation of the norms of international law governing State liability for harm caused by one riparian State to another.

41. Mr. KASME (Syrian Arab Republic) expressed a preference for the original text proposed by the International Law Commission, since the text proposed by the United States could be misleading. A State that was not a party could not claim a right under the Convention. On the other hand, a State that was not a party was not bound by any norm, and that was dangerous.

42. Mr. ROSENSTOCK (Expert Consultant), referring to the concern voiced by the representative of the Syrian Arab Republic, said that it was not accurate to say that the Convention could not provide benefits to third parties. There was no doubt that it could provide benefits to third parties, and that was the object of the United States proposal. It should also be noted that the Convention could not create obligations for third parties.

43. Mr. SABEL (Israel) supported the proposal of the United States, adding that States that were not parties remained bound by the applicable international customary law.

44. Mr. DEKKER (Netherlands) said that States members of the European Union supported the proposal. With regard to the remarks by the representative of China, he said that the current text applied to two parties, not two types of watercourse States. The two parties were the State party and regional economic integration organizations. The inclusion of those organizations was a technical solution that was necessary in view of the final clause, which allowed such

organizations to become parties to the Convention. The alternative would be to make drastic changes to the entire text of the Convention.

45. Mr. SVIRIDOV (Russian Federation) said that while there was no doubt as to the first part of the proposal, the reference to a regional economic integration organization was ambiguous. He wondered if it could be interpreted as meaning any organization, whether or not the latter was a party to the Convention. In order to dispel any doubt, his delegation would like to add a sentence indicating that the organization was a party to the Convention, which would eliminate the ambiguity.

46. Mr. GONZÁLEZ (France) pointed out that the French version of document A/C.6/51/NUW/WG/CRP.89, did not yet contain the stylistic changes he had requested.

47. Ms. FLORES (Mexico) and Mr. Sung Kyu LEE (Republic of Korea) supported the United States proposal.

48. Mr. AL-WITRI (Iraq), said that he would prefer to retain the text of the International Law Commission.

49. Mr. AMARE (Ethiopia) said that his delegation was concerned that implementation of the Convention could be limited to interested watercourse States. However, since the Convention conferred rights on watercourse States, as Mr. Rosenstock had pointed out, it would support the proposal.

50. Mr. WELBERTS (Germany) supported the United States proposal and urged other delegations to do likewise. The reference to regional economic integration organizations was fundamental, as it provided a technical solution to a problem which would otherwise require major changes throughout the text. As for the comment made by the representative of the Russian Federation, the words "party to the present Convention" referred to all entities covered by article 2, paragraph (c); in his view, the text was clear.

51. Mr. P. S. RAO (India) said that he preferred the original text of article 2. It would have been simpler to indicate that, for purposes of the Convention, regional economic integration organizations could be considered "watercourse States" insofar as the Member States would have transferred competence to them.

52. Mr. HARRIS (United States of America) said that there appeared to be two issues of concern to delegations: the first was who should be considered a party to the Convention and the second was how best to refer to regional economic integration organizations. In accordance with international customary law, the category of "watercourse State" could include not only countries but also persons, corporations and regional economic integration organizations. Therefore, from the standpoint of international law, it was perfectly appropriate to include regional economic integration organizations in the definition of "party". The Vienna Convention on the Law of Treaties accorded countries great flexibility in structuring their international agreements as they saw fit.

53. Mr. ROSENSTOCK (Expert Consultant) wondered whether the Chinese proposal - whereby the report would contain a statement indicating everything that was not included in the clause - could be accepted.

54. The CHAIRMAN decided to defer consideration of the article and requested time to assess the situation with regard to articles 5, 6 and 7.

The meeting was suspended at 11.50 a.m. and resumed at 12.40 p.m.

55. The CHAIRMAN introduced the text of articles 5, 6 and 7, saying that it was the result of a careful study based on the proposals officially submitted by Governments to the Working Group and the Drafting Committee and the proposals submitted during informal consultations. His proposal did not include all the observations formulated by delegations - not because he did not respect them or because he rejected them, but rather because they were not all generally accepted. The proposal was an organic whole and any alternation to one part would upset the precarious balance that had been achieved. Articles 5, 6 and 7 were the cornerstone of the Convention. Therefore, the position of delegations applied not only to those articles but to the entire Convention. Accordingly, he requested delegations to consider it carefully, pointing out that he, and not the coordinators, bore overall responsibility for the proposed text.

56. Article 5, paragraph 1, was based on the text contained in the report of the Drafting Committee (A/C.6/51/NUW/WG/L.1/Rev.1). In his view, adding the words "taking into account the interests of the watercourse States concerned" after the word "therefrom" would help to balance articles 5, 6 and 7 contained in his proposal. The text of article 6 coincided with that contained in the report of the Drafting Committee, except that the word "pedological", contained in square brackets, had been deleted. With respect to paragraph 1 (e) of that article, he drew the working group's attention to the understanding contained in paragraph 16 of document A/C.6/51/SR.24. The text of article 7 was that used by the coordinator of the informal consultations on that article, with certain amendments which needed no explanation. Articles 5, 6 and 7 should be viewed as a whole; if delegations required instructions from their Governments, they should obtain them as rapidly as possible so that a decision could be adopted on time.

The meeting rose at 12.55 p.m.